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|-----------------|--------------|----------------------|---------------------|
| APPLICATION NO. | FILING DATE  | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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E0M1/0722

EXAMINER

FLYNN, N

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| 2602     | 29           |

DATE MAILED: 07/22/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

|                              |                                      |                               |
|------------------------------|--------------------------------------|-------------------------------|
| <b>Office Action Summary</b> | Application No.<br><b>08/166,019</b> | Applicant(s)<br><b>Berry</b>  |
|                              | Examiner<br><b>Nathan J. Flynn</b>   | Group Art Unit<br><b>2602</b> |



Responsive to communication(s) filed on Apr 30, 1997.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-5, 7-19, 21-28, and 30-56 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 1-5 is/are allowed.

Claim(s) 7-19, 21-28, and 30-56 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Since Applicant has filed a terminal disclaimer, the double patenting rejection made in the previous Office Action has been withdrawn.

2. The reissue oath or declaration filed with this application is defective because it fails to describe the actual error(s) in the patent, i.e., it fails to particularly specify the "defects" in the specification or drawings, 37 CFR 1.175 (a)(2); and/or it fails to distinctly specify the "excess or insufficiency" in the claims, 37 CFR 1.175(a)(3). The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required under 37 CFR 1.175(a)(5). Included are inadvertent errors in conduct, i.e., actions taken by the applicant, the attorney or others, before the original patent issued, which are alleged to be the cause of the actual errors in the patent. This includes how and when the errors in conduct arose or occurred, as well as how and when these errors were discovered. Applicant's attention is directed to *Hewlett-Packard v. Bausch & Lomb*, 11 USPQ2d 1750, 1758 (Fed. Cir. 1989).

As to the changes in the specification, Applicant has failed to point out specifically how each of these errors arose, how each of these errors are correctable through reissue and how each change corrects these errors.

The Examiner suggests that Applicant point out very specifically how every change in the specification is to correct an error that is correctable through reissue and how the change corrects that error. The errors should be addressed individually, not by blanket statements.

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Applicant has failed to compare new claims with the claims in the original patent to which they are closest. The new claims should not be compared with claims in '734 or the re-exam because this implies that Applicant is seeking to correct errors that occurred during these proceedings, not the prosecution of '947.

Applicant has compared new claims in this reissue to other previously submitted new claims in this reissue. For example, claim 42 is compared to claim 16 and claim 48 is compared to claim 28. This implies that claims 42 and 48 have been submitted to correct errors contained in claims 16 and 28 respectively. In a reissue, new claims may be submitted to correct errors in the original patent not errors in the reissue.

In paragraph 26 of the declaration, Applicant states that the errors were discovered when consulting with "several attorneys". It appears that these "several attorneys" played a significant role in the discovery of the errors in the original patent. Therefore, the details of the meetings with these "several attorneys" must be included in the declaration.

The Examiner suggests that in future declarations, Applicant state for each claim what error it is seeking to correct; how that error is correctable through reissue; exactly how and when the error occurred; how, when and by whom the error was discovered; and compare the new claim with the closest claim in the original patent (not '734 or the re-exam).

3. Claims 5, 7-19, 21-28, 30-56 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

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4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

5. A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Flynn whose telephone number is (703) 308-6601. The examiner can normally be reached Monday to Thursday from 7 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Peng, can be reached on (703) 305-4702. The fax phone number for this Group is (703) 308-5399.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
Nathan J. Flynn  
Patent Examiner  
July 21, 1997



JOHN K. PENG  
SUPERVISORY PATENT EXAMINER  
GROUP 2600